

REMARKS

This paper is being provided in response to the Office Action dated November 20, 2006, for the above-referenced application. In this response, Applicants have amended claims 35-37, 39, 40, 66-69, 71, 72 and 89 to clarify that which Applicants consider to be the claimed invention. Applicants respectfully submit that the amendments to the claims are fully supported by the originally-filed specification. As discussed below, Applicants have also submitted a Terminal Disclaimer herewith.

The rejection of claims 67-98 under 35 U.S.C. 101 as being directed to non-statutory subject matter have been addressed by amendments contained herein and reconsideration is respectfully requested. Claims 67-98 have been amended to recite a computer program product stored in a computer-readable medium and is statutory subject matter as provided under the MPEP. Specifically, MPEP 2106(IV)(B)(1) states as follows:

[F]unctional descriptive material consists of data structures and computer programs which impart functionality when encoded on a computer-readable medium. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) ...When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.

Accordingly, Applicants respectfully submits that the rejection be reconsidered and withdrawn.

The rejections of claims 36, 37, 39, 40, 57-66, 68, 69, 71, 72 and 89-98 under 35 U.S.C. 112, second paragraph, as being indefinite have been addressed by amendments to the claims

herein in accordance with the guidelines as set forth in the Office Action. Accordingly, Applicants respectfully request that the rejection be reconsidered and withdrawn.

The statutory-type double patenting rejection of claims 35-66 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-32 of U.S. Patent No. 6,314,558 is hereby traversed and reconsideration is respectfully requested. Claims 35-66 of the present application do not recite the same invention as in recited in claims 1-32 of U.S. Patent No. 6,314,558. For example, independent claim 1 of U.S. Patent No. 6,314,558 recites a method of instrumenting an initial byte code computer program that includes at least the features of:

"instrumenting, while loading the initial byte code, the portions by supplementing the initial byte code with additional byte code for instrumentation that facilitates runtime data gathering to monitor execution of the computer program, wherein a portion of the additional byte code uses the identifier to instrument portions of the initial byte code associated with said at least one block of code."

Whereas, for example, independent claim 35 of the present application recites a method of instrumenting an initial byte code computer program that includes at least the features of:

instrumenting, after a runtime system for executing byte code receives said initial byte code, the portions by supplementing the initial byte code with additional byte code for instrumentation that facilitates runtime data gathering to monitor execution of the computer program, wherein a portion of the additional byte code uses the identifier to instrument portions of the initial byte code associated with said at least one block of code.

It is noted from the above that in independent claim 1 of U.S. Patent No. 6,314,558 an instrumenting function is performed while loading the initial byte code, whereas, in independent claim 35 of the present application, an instrumenting function is performed after a runtime system for executing byte code receives the initial byte code. A comparison of independent claim 23 of U.S. Patent No. 6,314,558 and independent claim 57 of the present application yields a similar conclusion. In view of the above, it is seen that the claims of the present application do not recite the same invention as is claimed in U.S. Patent No. 6,314,558. Accordingly, the statutory double patent rejection should be reconsidered and withdrawn.

The statutory-type double patenting rejection of claims 67-98 under 35 U.S.C. 101 as claiming the same invention as that of claims 1-32 of U.S. Patent No. 6,643,842 is hereby traversed and reconsideration is respectfully requested. Claims 67-98 of the present application do not recite the same invention as in claims 1-32 of U.S. Patent No. 6,643,842. For example, independent claim 1 of U.S. Patent No. 6,643,842 recites a computer program product for instrumenting an initial byte code computer program that includes machine executable code with features that at least:

"instruments, while loading the initial byte code, the portions by supplementing the initial byte code with additional byte code for instrumentation that facilitates runtime data gathering to monitor execution of the computer program, wherein a portion of the additional byte code uses the identifier to instrument portions of the initial byte code associated with said at least one block of code."

Whereas, for example, independent claim 66 of the present application recites a computer program product, stored in a computer-readable medium, that instruments an initial byte code computer program and includes code with features that at least:

instruments, after a runtime system for executing byte code receives said initial byte code, the portions by supplementing the initial byte code with additional byte code for instrumentation that facilitates runtime data gathering to monitor execution of the computer program, wherein a portion of the additional byte code uses the identifier to instrument portions of the initial byte code associated with said at least one block of code.

It is noted from the above that in independent claim 1 of U.S. Patent No. 6,643,842, machine executable code controls an instrumenting function while loading the initial byte code, whereas, in independent claim 66 of the present application, code controls an instrumenting function after a runtime system for executing byte code receives said initial byte code. A comparison of independent claim 23 of U.S. Patent No. 6,643,842 and independent claim 89 of the present application yields a similar conclusion. In view of the above, it is seen that the claims of the present application does not recite the same invention as is claimed in U.S. Patent No. 6,643,842. Accordingly, the statutory double patent rejection should be reconsidered and withdrawn.

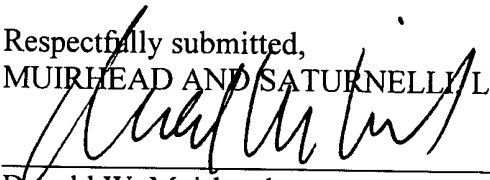
The nonstatutory obviousness-type double patenting rejection of claims 67-98 over claims 1-32 of U.S. Patent No. 6,314,558 has been addressed by the submission of a Terminal Disclaimer herewith. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Based on the above, applicant respectfully requests that the Examiner reconsider and withdraw all outstanding rejections and objections. Favorable consideration and allowance are earnestly solicited. Should there be any questions after reviewing this paper, the Examiner is invited to contact the undersigned at 508-898-8603.

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